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14 SOLAR UNIVERSE, INC.

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA -- LAS VEGAS

17
18
19 SOLAR UNIVERSE, INC., a Delaware
corporation,

20 Plaintiff,

21 vs.

22 JERSEY ELECTRIC, INC., a Nevada
23 corporation; JERSEY SOLAR LAS VEGAS,
INC., a Nevada corporation; BRIAN GECZI, an
24 individual; and GREGG LAWSON, an
25 individual,

26 Defendants.
27
28

Case No.

**PLAINTIFF SOLAR UNIVERSE,
INC.'S COMPLAINT FOR LANHAM
ACT VIOLATIONS FOR
TRADEMARK INFRINGEMENT,
FALSE ADVERTISING, UNFAIR
COMPETITION; CALIFORNIA
TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION; BREACH
OF CONTRACT; AND FOR BREACH
OF GUARANTY**

1 Plaintiff Solar Universe, Inc. ("SUN"), by and through its attorneys, for its
 2 Complaint against Defendants Jersey Electric, Inc. ("Jersey Electric"), Jersey Solar Las Vegas,
 3 Inc. ("Jersey Solar"), Brian Geczi ("Geczi"), and Gregg Lawson ("Lawson") (collectively referred
 4 to herein as "Defendants") alleges as follows:

5 INTRODUCTION

6 Solar Universe, Inc. ("SUN"), brings this action to stop Defendants' unauthorized
 7 operation of a competitive venture using SUN's trademarks and confidential business information
 8 as part of a calculated scheme to build a new business directly in competition with SUN and in
 9 violation of Defendant Jersey Electric's Franchise Agreement with SUN. After becoming a SUN
 10 franchise in 2011, Defendant Jersey Electric, Inc. ("Jersey Electric"), experienced strong
 11 commercial success as an authorized Solar Universe franchise, generating gross sales of almost
 12 \$4.5 million in 2013. Realizing that the Las Vegas market for solar and renewable energy
 13 products and services is both rapidly growing and highly profitable, Defendants decided that they
 14 no longer needed to honor their contract with the franchisor, SUN. Instead, Defendants struck out
 15 on their own, creating a new business entity, Jersey Solar Las Vegas, Inc. ("Jersey Solar"), in a
 16 transparent attempt to divert customers from Defendants' Solar Universe business to their new
 17 venture. In doing so, Defendants have unfairly used the SUN trademarks and confidential business
 18 information to which they gained access through their franchise relationship for the benefit of their
 19 competing business (Jersey Solar) in order to misappropriate the goodwill of a recognized brand
 20 and compete in a manner designed to deceive customers and irreparably harm SUN.

21 The Defendants are well aware of the effect of their actions on SUN. Far from
 22 being a small, Mom-and-Pop start-up franchisee, Defendant Jersey Electric is a multi-faceted and
 23 diversified business; solar only makes up a portion of its total business, which also includes
 24 electrical services, network and cabling solutions, access control and CCTV installations, and
 25 outdoor lighting services. Having availed themselves of the benefits of SUN's reputation and
 26 well-developed system in order to establish a local solar energy product and services business as a
 27 SUN franchisee, Defendants deliberately started a new business in direct competition with SUN,
 28 offering the same products and services, to the same customers, and using the same SUN

1 trademarks and confidential information. Defendants' operation of its competing Jersey Solar
 2 business constitutes multiple breaches of the written franchise agreement between SUN and
 3 Defendant Jersey Electric, trademark infringement, false advertising, and unfair competition, and
 4 damages SUN's franchise system and goodwill, as well as threatens to confuse, deceive and
 5 mislead consumers. These harms are irreparable, and will continue unless Defendants' conduct is
 6 enjoined by this Court. Accordingly, SUN seeks a preliminary and permanent injunction
 7 (i) enjoining Defendants' operation of any competing business during the term of the Franchise
 8 Agreement; and (ii) prohibiting Defendants' use of SUN's federally registered trademarks, trade
 9 secrets, and confidential business information in connection with the operation of any
 10 non-franchised business.

11 PARTIES

12 1. Plaintiff Solar Universe, Inc. ("SUN"), is a corporation organized under the
 13 laws of Delaware with its principal place of business in Livermore, California. SUN is authorized
 14 to be, and is, in the business of selling SUN franchises in California, Nevada, and other states
 15 throughout the United States.

16 2. On information and belief, Defendant Jersey Electric, Inc. ("Jersey
 17 Electric") is a corporation organized under the laws of Nevada, with its principal place of business
 18 in Las Vegas, Nevada.

19 3. On information and belief, Defendant Jersey Solar Las Vegas, Inc. ("Jersey
 20 Solar") is a corporation organized under the laws of Nevada, with its principal place of business in
 21 Las Vegas, Nevada.

22 4. On information and belief, Brian Geczi is an individual residing in Clark
 23 County, Nevada. Mr. Geczi holds himself out as the President and Owner of Defendant Jersey
 24 Electric, and as the President and Treasurer of Defendant Jersey Solar.

25 5. On information and belief, Gregg Lawson is an individual residing in Clark
 26 County, Nevada. Mr. Lawson holds himself out as an owner of Defendant Jersey Electric, and as
 27 the Secretary and Director of Defendant Jersey Solar.
 28

6. SUN is informed, believes, and thereon alleges that at all times relevant hereto, Defendants Geczi and Lawson were the agents, affiliates, officers, directors, managers, principals, alter egos, and/or employees of Defendants Jersey Electric and Jersey Solar, and were at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and that each Defendant actively participated in or subsequently ratified and adopted, or both, each and all of the acts and conduct alleged herein with full knowledge of all the surrounding facts and circumstances, including full knowledge of each and every violation of SUN's rights alleged herein and of the damages SUN suffered as a result thereof.

7. SUN is further informed, believes, and thereon alleges that at all times relevant hereto, Defendants Jersey Electric and Jersey Solar acted at the direction and control of Defendants Geczi and/or Lawson.

JURISDICTION AND VENUE

8. This action arises under the Federal Lanham Act, 15 U.S.C. § 1051 *et seq.*, as well as California statutory and common law. Subject matter jurisdiction is conferred upon this Court over the federal law claims under 28 U.S.C. § 1331, 28 U.S.C. § 1338 and 15 U.S.C. § 1121. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

9. This Court has personal jurisdiction over the Defendants because Defendants reside in this judicial district, and because Defendants do business here and have committed acts and violations that have caused injury in this judicial district.

10. Venue of this action lies in the District of Nevada pursuant to 28 U.S.C. § 1391.

FACTS

A. Solar Universe's Business and Trademarks

11. SUN is in the business of, among other things, franchising Solar Universe® businesses ("Solar Universe Business[es]") to third parties. Solar Universe Businesses provide solar photovoltaic installation, renewable energy applications and energy consulting to retail and commercial customers in designated territories.

12. For more than 5 years, SUN has sold franchises to qualified entities and persons for the operation of Solar Universe Businesses, which operate in conformity with the plans and specifications established by SUN and use SUN's uniform systems, equipment packages, customer practices, certain standard policy procedures, operating manuals, techniques and specifications, and other benefits (the "SUN System").

13. SUN controls the use of certain unique registered trademarks and service marks, trade names, signs, identification schemes, information and logos, including those for its network of franchised Solar Universe Businesses (collectively, the "SUN Marks" or "Marks"). (Franchise Agreement, ¶ 1.) SUN provides its authorized franchisees with certain benefits, including but not limited to, common identification through the use of the SUN Marks and the SUN System.

14. SUN and its franchisees have spent large sums of money advertising and promoting SUN, the Solar Universe Businesses, and the products and services sold under the various SUN Marks and the SUN System. As a result of this extensive advertising and promotion, substantial valuable goodwill has been developed in connection with SUN, the Solar Universe Businesses, and the products and services sold under the various SUN Marks. SUN's franchisees are granted a limited license to use and display the SUN Marks during the term of their franchise agreements. Franchisees are not authorized to use the Marks after the expiration or termination of their franchise agreements, nor are they authorized to use the SUN Marks in connection with other businesses.

15. SUN was granted several federal registrations issued by the United States Patent and Trademark Offices on the Principal Register for its SUN Marks, including, but not limited to:

MARK	REGISTRATION NO.	REGISTRATION DATE
Solar Universe®	3533679	November 18, 2008
Solar Universe Network®	3864893	October 19, 2010

16. These registrations are valid and enforceable, and the Solar Universe® trademark has been registered over five years and is thus incontestable to the extent provided by 15 U.S.C. § 1065 and 15 U.S.C. § 1115(b).

17. The SUN Marks are inherently distinctive, and have been and continue to be known throughout the United States as identifying and distinguishing the business of SUN and its franchisees.

B. The Parties' Written Franchise Agreement

18. On or about March 16, 2011, SUN and Jersey Electric entered into a written Franchise Agreement pursuant to which SUN granted to Jersey Electric a revocable, limited license to operate a Solar Universe Business in portions of Las Vegas, Nevada for a term of 10 years in exchange for a payment to SUN of \$42,102 (hereinafter "Franchise Agreement"). A true and correct copy of the Franchise Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

19. On or about March 16, 2011, Geczi signed a personal guaranty in which he expressly agreed to personally guarantee all of Jersey Electric's obligations as a franchisee (hereinafter, the "Guaranty"). A true and correct copy of the Guaranty is attached hereto as **Exhibit B** and incorporated herein by reference.

20. Under the terms of the Franchise Agreement, Jersey Electric was obligated to pay certain fees to SUN, including, but not limited to, Royalty Fees in the form of a bi-weekly fee equal to 3% of Gross Sales. (Franchise Agreement, ¶ 3.2.) In addition, Jersey Electric was obligated to pay all taxes, including, but not limited to, sales taxes, excise taxes, withholding taxes, use taxes, and similar taxes on such Fees. (Franchise Agreement, ¶ 3.4.) Further, Jersey Electric was obligated to contribute to a System-wide marketing, advertising, and promotion fund (the "Marketing Fund"). (Franchise Agreement, ¶ 11.3.) To the extent Jersey Electric failed to make any of these payments on time, late fees at the rate of one and one-half percent (1.5%) per month would accrue from the date payment was due until payment was made. (Franchise Agreement, ¶ 3.6.)

1 21. Under the terms of the Franchise Agreement, Jersey Electric agreed that it
2 would maintain complete and accurate books, records and accounts of its Solar Universe Business.
3 (Franchise Agreement, ¶ 12.1.) In addition, Jersey Electric acknowledged that it would deliver
4 regular Gross Sales Reports, financial statements, and other reports to SUN at specified intervals.
5 (Franchise Agreement, ¶¶ 12.2-12.4.)

6 22. Pursuant to Paragraph 6.1 of the Franchise Agreement, Jersey Electric
7 agreed that its right to use the SUN Marks is nonexclusive and limited to Jersey Electric's
8 operation of a Solar Universe Business pursuant to the terms of the Franchise Agreement. Jersey
9 Electric further acknowledged that any unauthorized use of the SUN Marks by it would constitute
10 a breach of the Franchise Agreement and an infringement of SUN's rights in and to the SUN
11 Marks. (Franchise Agreement, ¶ 6.1.)

12 23. Under the terms of the Franchise Agreement, Jersey Electric recognized that
13 SUN would disclose certain trade secrets, including, but not limited to, technical or non-technical
14 data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings,
15 processes, financial data, financial plans, product plans, passwords, lists of actual or potential
16 customers or suppliers ("Trade Secrets") and other types of proprietary and confidential
17 information ("Confidential Information"). (Franchise Agreement, ¶¶ 1 and 7.1.) Jersey Electric
18 further acknowledged that the use or duplication of the Trade Secrets or other Confidential
19 Information in any other business venture would constitute an unfair method of competition.
20 (Franchise Agreement, ¶ 7.1.)

21 24. Pursuant to the express terms of the Franchise Agreement, Jersey Electric
22 acknowledged that it was essential to the preservation of SUN's Marks, Trade Secrets, and
23 Confidential Information that it would refrain from holding an interest in or operating any business
24 offering or providing the same or similar services as Solar Universe Businesses during the term of
25 the Franchise Agreement ("Competitive Business"). (Franchise Agreement, ¶¶ 7.3 and 7.5.)
26 Accordingly, under the terms of the Franchise Agreement, Jersey Electric agreed that it would not:
27 (1) divert or attempt to divert any business of its Solar Universe Business to any Competitive
28

1 Business; or (2) own an interest in, manage, operate or perform services for any Competitive
2 Business. (Franchise Agreement, ¶¶ 7.3.1 and 7.3.2.)

3 25. Jersey Electric also agreed that it would strictly comply with SUN System
4 requirements, specifications, standards, operating procedures, and rules as set forth in the
5 Franchise Agreement, the Confidential Operations Manual, and other communications from SUN.
6 (Franchise Agreement, ¶ 10.1.) Consistent with these requirements, Jersey Electric was obligated
7 to purchase all equipment, supplies or inventory necessary for the operation of its business through
8 SUN or a SUN-approved supplier. (Franchise Agreement, ¶ 13.1.)

9 26. Under the terms of the Franchise Agreement, Jersey Electric additionally
10 agreed that it would not separately market its Solar Universe Business on the Internet without
11 SUN's prior written approval. (Franchise Agreement, ¶ 11.5.) Further, Jersey Electric
12 acknowledged that SUN could establish and maintain an interior page at the
13 www.solaruniverse.com website about Jersey Electric's franchised business. (Franchise
14 Agreement, ¶ 11.5.)

15 27. Jersey Electric began operating its Solar Universe Business on or about May
16 1, 2011. On or around that same time, SUN created and began maintaining a webpage for Jersey
17 Electric's Solar Universe Business at solaruniverse.com/vegas. The physical address provided on
18 this page for Jersey Electric's franchise is 4325 W. Patrick Ln, Suite 145, Las Vegas, NV 89118
19 (the "Patrick Lane address").

20 **C. Jersey Electric's Failure to Pay Amounts Owed to SUN and Other**
21 **Breaches of the Franchise Agreement**

22 28. Notwithstanding its contractual obligations to timely pay Royalty Fees,
23 Marketing Fund Contributions, equipment costs and other items, beginning in the latter part of
24 2013, Defendant Jersey Electric essentially stopped making current payments to SUN. Although
25 Defendant Jersey Electric continued to book sales and generate revenue through approximately
26 April 2014, Jersey Electric has failed to pay the majority of the associated required Royalty Fees,
27 Marketing Fund Contributions, or outstanding equipment order fees incurred during that time.
28 Instead, Defendant Jersey Electric paid down only the most overdue invoices and continues to

maintain a substantial outstanding balance of unpaid Royalty Fees, Marketing Fund Contributions, equipment costs and other fees (excluding late fees and interest).

29. In or about May 2014, SUN discovered that Defendants had started doing business in direct competition with SUN under the name "Jersey Solar" and "Jersey Solar Las Vegas" (collectively referred to herein as "Jersey Solar").

D. SUN'S June 6, 2014 Notice of Default and Defendants' Failure to Comply

30. On June 6, 2014, SUN issued a written notice of default ("Notice"), identifying Defendants' multitude of contractual breaches in violation of the Franchise Agreement and demanding that Defendants cease their unauthorized operation of Defendants' competing Jersey Solar business. (A true and correct copy of the Notice is attached hereto as **Exhibit C**.)

31. The Notice informed Defendants that they had 30 days to cure all non-payment obligations and breaches, and to cease operating a Competitive Business (*i.e.*, Jersey Solar). (See **Ex. C** at 5-6.) Defendants failed to cure any of these breaches, and have not ceased operating their competitive Jersey Solar business.

32. In the Notice, SUN also advised Defendants that as of that date, Defendants owed \$453,303.12 in unpaid Royalty Fees, Marketing Fund Contributions, outstanding equipment orders, and other items (excluding any applicable late fees). The Notice further advised Defendants that they had 14 days (until June 20, 2014) to remit the full amount owed. (*Id.*) Defendants failed to pay any of the amounts owed to SUN by June 20, 2014.

33. As of the date of this filing, Defendant Jersey Electric still owes \$421,976.82 in overdue and unpaid Royalty Fees, Marketing Fund Contributions, and outstanding equipment order fees (exclusive of applicable late fees and interest).

E. SUN'S Discovery of Jersey Electric's Infringing Actions in Operating its Competitive Business, Jersey Solar/Jersey Solar Las Vegas

34. Since discovering that Defendants started a competing business (Jersey Solar), SUN has additionally learned that Defendants are using the SUN Marks, Trade Secrets, and Confidential Information in the operation of Jersey Solar.

35. Defendants maintain a website advertising Jersey Solar's solar photovoltaic installation services, renewable energy applications and energy consultation at www.jerseysolarlasvegas.com (the "Jersey Solar website"). The Jersey Solar website, which purports to be copyrighted by "Jersey Electric & Solar," identifies Jersey Solar's physical address as 4001 S. Decatur Blvd., #37-467, Las Vegas, NV 89103 (the "Decatur Blvd. address"), which is the approved location for Defendant Jersey Electric's Solar Universe Business under the Franchise Agreement. (Franchise Agreement, ¶ 2.2.) The website additionally lists a telephone number, 877-437-6527, which is the same telephone number for Solar Universe Las Vegas: 1-877-43-SOLAR/1-877-437-6527.

36. Defendants' Jersey Solar website states: "Jersey Solar, a division of Jersey Electric, works with several area businesses to provide exceptional solar power equipment, installation and service."

37. The Jersey Solar website uses SUN Marks in a number of locations, further blurring the distinction between Jersey Solar and Jersey Electric's Solar Universe Business. For example, the Jersey Solar biography of Mark Holzhauser is copied word-for-word from the Solar Universe Las Vegas page, and provides, in part:

"Mark came to work for Solar Universe after he had purchased and installed a Solar Universe SUN System on his own home. Before his purchase, he studied and learned a lot about solar electric systems and then compared a number of suppliers and found that many don't tell you the whole story, e.g., the difference between string inverters and micro inverters. He also found that some companies quote on undersized systems to get your business, hoping you'll add more equipment when you realize you haven't eliminated your electric bill. After his system was operational he maintained contact with Gregg Lawson, **who later asked Mark to come to work for Solar Universe.**" (Emphasis added.)

Similarly, Troy Munnich's Jersey Solar biography has also been duplicated from the Solar Universe Las Vegas page, and states, in part: "Troy has since moved on to 'greener' pastures **by coming to work for Solar Universe.**" (Emphasis added.)

38. The Jersey Solar website also copies a tagline associated with Solar Universe Las Vegas: "Why Rent Your Power When You Can Own It?" The Jersey Solar website uses this tagline in multiple places on its Residential Solar page.

39. The Jersey Solar website further copies several customer testimonials directly from the Solar Universe website and captions them as “Jersey Solar Testimonials in Las Vegas, NV.” For example, the Jersey Solar testimonial page includes a client testimonial for the “Tanciatco Residence,” which has been duplicated word-for-word from the Solar Universe Las Vegas webpage, stating:

“My experience with Solar Universe Las Vegas can be summed up as “outstanding!” Installation went along without a hitch! The crucial question from me as a customer, “Will the system work and be worth its cost?” The success of any business depends on quality, usefulness, affordability and durability of its product, Solar Universe Las Vegas added an important ingredient, it’s people!” (Emphasis added.)

Likewise, the Jersey Solar testimonial page copies the Cannon Residence testimonial, which provides that “We are very satisfied with [S]olar [U]niverse in [L]as [V]egas, very knowledgeable and courteous . . . we highly recommend [S]olar [U]niverse to everyone . . . ” (Emphasis added.) Of the twenty-three customer testimonials on Jersey Solar’s website, all but one have been copied from the Jersey Solar Las Vegas webpage.

40. The Jersey Solar website includes a link to a Yelp page for “Jersey Electric & Solar”. The Yelp page includes an external link to www.solaruniverse.com, and lists the business address at the Patrick Lane address, which is the same physical address as Defendant’s franchised Solar Universe Business according to its Solar Universe webpage. Jersey Electric & Solar’s Yelp page lists the 1-877-437-6527 number.

41. The Jersey Solar website also contains a link to a Facebook page for “Jersey Solar Las Vegas”. The “About” Section on the Facebook page includes the following description: “Mission . . . SolarUniverse [sic] is about providing clean, affordable solar energy and delivering the best customer experience in Nevada . . . SolarUniverse [sic] is now able to offer customers the benefit of solar . . . ” The “About” Section further provides: “Description . . . At Jersey Solar, you get all the benefits of a local company . . . Solar Universe offers safe, simple, and cost-effective solar electrical system design & installations . . . Why Rent Your Power When You Can Own It?”; this Section has been copied directly from the Solar Universe Las Vegas page, but replaces the first few uses of “Solar Universe” with “Jersey Solar.” The Facebook page for Jersey Solar

1 Las Vegas additionally lists the Patrick Lane address and the 1-877-437-6527 business number,
 2 both which are associated with Jersey Electric's franchised Solar Universe Business. Furthermore,
 3 the Facebook page indicates that Jersey Solar Las Vegas joined Facebook on November 14, 2013,
 4 well before Jersey Solar Las Vegas was incorporated in March 2014.

5 42. The Jersey Solar website also includes a link to an Angie's List page for
 6 "Jersey Solar Las Vegas". The Angie's List page provides the Patrick Lane address, and
 7 advertises that it has been in business since 2001 -- despite the fact that Jersey Solar Las Vegas
 8 only incorporated in March 2014. It further lists the 1-877-437-6527 contact number associated
 9 with Solar Universe Las Vegas. In the Section called "Business Description," the Angie's List
 10 page provides the following description: "Jersey Solar Las Vegas offers safe, simple and
 11 cost-effective solar electrical system design . . . *Why Rent Your Power When You Can Own It?*"
 12 (Emphasis added.) Again, this descriptive text has been copied from the Solar Universe Las Vegas
 13 webpage, and simply replaced "Solar Universe" with "Jersey Solar Las Vegas."

14 43. The Jersey Solar website further contains a link to a BBB Business Review
 15 page for "Jersey Solar Las Vegas Inc." Again, the page lists the Patrick Lane address and the
 16 1-877-437-6527 telephone number associated with Solar Universe Las Vegas. The BBB Business
 17 Review page additionally advertises that "Jersey Solar Las Vegas Inc." has been a "BBB
 18 Accredited Business since 11/17/2011." The page also provides the following statistics: "Business
 19 started: 08/09/2001"; "Business started locally: 06/29/2011" and "Incorporated: June 2011, NV."
 20 These dates appear to correspond with information relating to Defendant *Jersey Electric, not*
 21 *Jersey Solar*, and further serve to confusingly conflate the two entities.

22 44. On information and belief, Defendants have further utilized SUN's Trade
 23 Secrets and Confidential Information, including, but not limited to, customer lists and customer
 24 data, in order to target customers of SUN and Solar Universe Las Vegas and divert them to their
 25 Jersey Solar business.

26 45. In sum, since approximately May 2014, Defendants have used the SUN
 27 Marks, as well as SUN's Trade Secrets and Confidential Information, to operate their Jersey Solar
 28 business in competition with SUN and Defendants' own franchised Solar Universe Business.

Defendants' conduct includes, among other things: claiming that products and services provided by Defendants' franchised Solar Universe Business are Jersey Solar products and services when they are not; displaying SUN Marks on the Jersey Solar website; duplicating copy from SUN's internal Solar Universe Las Vegas webpage, including, but not limited to, client testimonials and employee biographies; and copying photographs from SUN's internal Solar Universe Las Vegas webpage, all in violation of the Franchise Agreement.

CLAIMS

46. This action arises out of Defendants' trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114; false advertising and unfair competition in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a); trademark infringement in violation of Cal. Bus. & Prof. Code § 14245; unfair competition in violation of Cal. Bus. & Prof. Code. § 17200; breaches of the Franchise Agreement; and breaches of the Guaranty.

47. Consistent with the terms of the parties' Franchise Agreement, SUN only seeks injunctive relief by way of this Complaint. All other forms of relief, including monetary damages for Defendants' wrongful conduct and the attorneys' fees/costs SUN has incurred and will incur in prosecuting this action, will be pursued in arbitration.

FIRST CLAIM FOR RELIEF **(Lanham Act Trademark Infringement -- 15 U.S.C. § 1114)** **(All Defendants)**

48. SUN hereby incorporates and realleges paragraphs 1 through 47 of this Complaint.

49. SUN's claim arises under Section 32 of the Lanham Act, 15 U.S.C. § 1114, for the infringement of trademarks registered in the United States Patent and Trademark Office.

50. As described above, Defendants have used and are using the SUN Marks in connection with the advertising, marketing and offering of solar photovoltaic products and other solar products sold through Defendants' competing Jersey Solar business.

51. Defendants' activities will nullify SUN's right to the exclusive use of its trademarks and other proprietary symbols and systems free from infringement.

52. Defendants' use of the SUN Marks for the benefit of their competing Jersey Solar business violates SUN's trademark rights and is likely to cause confusion, mistake, and/or deception with consumers as to the source and origin of Defendants' products and services.

53. Defendants' activities have had and will continue to have a substantial, adverse effect on SUN's existing and projected future interstate and intrastate business, including its reputation and business identity, resulting in lost revenue and profits, and diminished goodwill and reputation.

54. Defendants' activities and conduct constitute infringement of each of SUN's registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, by inducing the erroneous belief that Defendants' competing Jersey Solar business and/or their goods are in some manner affiliated with, originate from, or are sponsored by SUN.

55. SUN has no adequate remedy at law because the registered SUN Marks and other proprietary systems and symbols are unique and represent to the public the identity, reputation and goodwill of the SUN Marks and the SUN System. SUN has been and continues to be damaged by Defendants' activities and conduct. Defendants have profited thereby and unless Defendants' misconduct is enjoined, SUN and its goodwill and reputation will continue to suffer irreparable injury. Said injuries cannot be adequately calculated or compensated solely by money damages in that such damages involve impairment of the integrity of SUN's franchise system as well as lost profits, business opportunities, and goodwill. Accordingly, SUN seeks, and is entitled to, preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

56. Defendants' violations of 15 U.S.C. § 1114 were knowing, deliberate, and intentional. Accordingly, SUN is also entitled to recover enhanced damages and its attorneys' fees.

SECOND CLAIM FOR RELIEF
(Lanham Act False Advertising -- 15 U.S.C. § 1125(a))
(All Defendants)

57. SUN hereby incorporates and realleges paragraphs 1 through 56 of this Complaint.

1 58. SUN's claim arises under Section 43(a) of the Lanham Act, 15 U.S.C.
2 1125(a), for false advertising.

3 59. Defendants have intentionally and knowingly misused SUN's distinctive
4 trademarks and other proprietary systems, including, but not limited to, selling products and
5 providing services through their competing Jersey Solar business while using the SUN Marks
6 without permission, license, or authority from SUN in violation of the Lanham Act.

7 60. Like SUN's authorized franchised businesses, Defendants' Jersey Solar
8 business uses advertising and promotional materials bearing the distinctive SUN Marks. For
9 example, Defendants use client testimonials that refer to and review SUN and Solar Universe
10 Las Vegas on Defendant Jersey Solar's website. These statements are misleading because these
11 are clients of SUN and Solar Universe Las Vegas, and refer to the customer's experience with
12 SUN and Solar Universe Las Vegas, not Defendant Jersey Solar. Defendants' infringement and
13 trademark misuse is calculated and intended to mislead the public into believing Defendants'
14 Jersey Solar business is associated with, franchised by, and/or otherwise approved by SUN.

15 61. Defendants' false and misleading descriptions misrepresent the nature,
16 characteristics, qualities or origins of Defendant Jersey Solar's products, services, or commercial
17 activities. Defendants' uses of, among other things, the same physical address, telephone number,
18 photos and website copy used by Solar Universe Las Vegas misrepresent that the Defendants'
19 Jersey Solar business has a common identity with the Solar Universe Las Vegas franchise that
20 Defendants purchased from SUN in 2011.

21 62. Defendants' representation of their Jersey Solar business is a false and
22 misleading description or representation of fact which is likely to cause confusion, mistake or
23 deception as to the affiliation, connection or association of Defendants' Jersey Solar business with
24 SUN, or as to the origin or approval of Defendants' goods or services by SUN and misrepresents
25 in Defendants' advertising and promotion the nature, characteristics, qualities and origin of
26 Defendants' goods and services as being provided by an authorized franchisee of SUN.

27 63. Defendants' use of the SUN Marks violates SUN's trademark rights and is
28 likely to cause confusion, mistake, and/or deception with consumers as to the source and origin of

1 Defendants' products and services. Defendants' acts have further caused and are likely to cause
2 actual confusion, mistake, and/or deception.

3 64. Defendants' activities have had and will continue to have a substantial,
4 adverse effect on SUN's existing and projected future interstate and intrastate business, including
5 its reputation and business identity, resulting in lost revenue and profits, and diminished goodwill,
6 particularly in the franchised territory.

7 65. Defendants' false and misleading statements are material. The statements
8 are likely to influence consumers' purchasing decisions and to divert customers away from SUN to
9 Defendants' Jersey Solar business. The statements have caused or will cause the public to be
10 deceived.

11 66. Defendants' activities and conduct constitute false advertising in violation
12 of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

13 67. SUN has no adequate remedy at law because the registered SUN Marks and
14 other proprietary systems and symbols are unique and represent to the public the identity,
15 reputation and goodwill of the SUN Marks and the SUN System. SUN has been and continues to
16 be damaged by Defendants' activities and conduct. Defendants have profited thereby and unless
17 Defendants' misconduct is enjoined, SUN and its goodwill and reputation will continue to suffer
18 irreparable injury. Said injuries cannot be adequately calculated or compensated solely by money
19 damages in that such damages involve impairment of the integrity of SUN's franchise system as
20 well as lost profits, business opportunities and goodwill. Accordingly, SUN seeks, and is entitled
21 to, preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

22 68. Defendants' violations of 15 U.S.C. § 1125(a) were knowing, deliberate,
23 and intentional.

24 69. Accordingly, the Plaintiff is also entitled to a recovery of enhanced damages
25 and its attorneys' fees.

BARTKOZANKEL BUNZEL
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THIRD CLAIM FOR RELIEF
(Lanham Act False Designation of Origin/Unfair Competition -- 15 U.S.C. § 1125(a))
(All Defendants)

70. SUN hereby incorporates and realleges paragraphs 1 through 69 of this Complaint.

71. Defendants' acts complained of herein constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants have included false and misleading descriptions of fact in connection with commercial advertising or promotion on at least their Jersey Solar website, their Yelp page, their Facebook page, their Angie's List page, and their BBB Business Review page. These activities involve false designation and description of Defendants' business and the misuse of valuable, Confidential Information and Trade Secrets such as lists of actual or potential customers acquired as a direct result of participation in the SUN System.

72. Defendants' false and misleading statements are material. The statements are likely to influence consumers' purchasing decisions and to divert customers away from SUN to Defendants' competing Jersey Solar business. The statements have caused or will cause the public to be deceived.

73. Defendants' activities have had and will continue to have a substantial, adverse effect on SUN's existing and projected future interstate and intrastate business, including its reputation and business identity, resulting in lost revenue and profits, and diminished goodwill, especially in the franchised territory.

74. Defendants' activities and conduct are unfair, unlawful, fraudulent, deceptive and misleading, and constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

75. SUN has been and continues to be irreparably damaged by Defendants' activities and conduct, and SUN has no adequate remedy at law. Defendants have profited thereby and unless Defendants' misconduct is enjoined, SUN and its goodwill and reputation will continue to suffer irreparable injury. Said injuries cannot be adequately calculated or compensated solely by money damages in that such damages involve impairment of the integrity of SUN's franchise

1 system as well as lost profits, business opportunities and goodwill. Accordingly, SUN seeks, and
 2 is entitled to, preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

3 76. Defendants' violations of 15 U.S.C. § 1125(a) were knowing, deliberate,
 4 and intentional. Accordingly, SUN is also entitled to a recovery of enhanced damages and its
 5 attorneys' fees.

6 **FOURTH CLAIM FOR RELIEF**
 7 **(California Trademark Infringement -- Cal. Bus. & Prof. Code § 14245)**
 8 **(All Defendants)**

9 77. SUN hereby incorporates and realleges paragraphs 1 through 76 of this
 10 Complaint.

11 78. Defendants have intentionally and knowingly misused SUN's distinctive
 12 trademarks and other proprietary systems in a scheme to divert business from SUN to Defendants'
 13 competing Jersey Solar business. Defendants' acts include, but are not limited to: using
 14 advertising and marketing materials bearing the distinctive SUN Marks to promote Defendants'
 15 competing Jersey Solar business; offering the same products and services through their competing
 16 Jersey Solar business to the same class of customers as those who patronize authorized Solar
 17 Universe Businesses; and using the SUN Marks, Trade Secrets and Confidential Information to
 18 divert business from authorized Solar Universe Businesses.

19 79. Like SUN's authorized franchised businesses, Defendants' Jersey Solar
 20 business uses advertising and promotional material bearing the distinctive SUN Marks.
 21 Defendants' infringement and trademark misuse is calculated and intended to mislead the public
 22 into believing Defendants' Jersey Solar business is associated with, franchised by, and otherwise
 23 approved by SUN.

24 80. Defendants' use of the SUN Marks violates SUN's trademark rights and is
 25 likely to cause confusion, mistake, and/or deception with consumers as to the source and origin of
 26 Defendants' products and services. Defendants' acts have further caused and are likely to cause
 27 actual confusion, mistake, and/or deception.

28 81. Defendants' activities have had and will continue to have a substantial,
 adverse effect on SUN's existing and projected future interstate business, including its reputation

1 and business identity, resulting in lost revenue and profits, and diminished goodwill, particularly
2 within the franchised territory.

3 82. Defendants' activities and conduct constitute infringement of each of SUN's
4 registered trademarks in violation of Cal. Bus. & Prof. Code § 14245.

5 83. SUN has no adequate remedy at law because the registered SUN Marks and
6 other proprietary systems and symbols are unique and represent to the public the identity,
7 reputation and goodwill of the SUN Marks and the SUN system. SUN has been and continues to
8 be damaged by Defendants' activities and conduct. Defendants have profited thereby and unless
9 Defendants' misconduct is enjoined, SUN and its goodwill and reputation will continue to suffer
10 irreparable injury. Said injuries cannot be adequately calculated or compensated solely by money
11 damages in that such damages involve impairment of the integrity of SUN's franchise system as
12 well as lost profits, business opportunities and goodwill. Accordingly, SUN seeks, and is entitled
13 to, preliminary and permanent injunctive relief.

14 **FIFTH CLAIM FOR RELIEF**
15 **(California Unfair Competition -- Cal. Bus. & Prof. Code § 17200)**
16 **(All Defendants)**

17 84. SUN hereby incorporates and realleges paragraphs 1 through 83 of this
18 Complaint.

19 85. Defendants' conduct as alleged herein involved the misuse of SUN's
20 valuable Marks, Trade Secrets and Confidential Information, which were acquired as the direct
21 result of Defendants' franchise relationship with SUN and participation in the SUN System. On
22 information and belief, Defendants are using SUN's Trade Secrets, including, but not limited to,
23 lists of actual or potential customers in order to identify potential clients for their Jersey Solar
24 business.

25 86. Defendants' continued operation of a confusingly similar business involves
26 unfair, deceptive, untrue and misleading advertising and unfair business practices. Their actions,
27 as described herein, are causing the consuming public to conclude improperly that Defendants are
28 connected or otherwise associated with SUN.

87. Defendants' acts are unfair, unlawful, fraudulent, deceptive and misleading and as such constitute unfair competition and deceptive practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.* Unless restrained and enjoined, Defendants' illegal acts will cause irreparable injury and damage to SUN, for which Plaintiff is entitled to injunctive and monetary relief.

SIXTH CLAIM FOR RELIEF
(Breach of Franchise Agreement)
(Defendant Jersey Electric, Inc.)

88. Plaintiff hereby incorporates and realleges paragraphs 1 through 87 of this Complaint.

89. Plaintiff has performed all conditions, covenants, and promises required by it to be performed in accordance with the terms and conditions of the Franchise Agreement.

90. Defendant Jersey Electric has breached the Franchise Agreement by, *inter alia*: (i) ceasing to operate their Solar Universe Business (Franchise Agreement, ¶¶ 13.3, 13.4); (ii) failing to pay Royalty Fees, Taxes, Late Fees, Marketing Fund Contributions, equipment order fees, and other items; (iii) failing to provide SUN with a monthly statement of Gross Sales, monthly financial statements and other reports (Franchise Agreement, ¶¶ 12.3, 12.4); (iv) operating a Competitive Business – *i.e.*, Jersey Solar (Franchise Agreement, ¶ 7.3); (v) using SUN's Marks without authorization in connection with their operation of Jersey Solar (Franchise Agreement, ¶ 6.2); and (vi) misappropriating, disclosing or using SUN's Trade Secrets and Confidential Information in connection with their operation of Jersey Solar (Franchise Agreement, ¶¶ 7.1, 9.3).

91. On or about June 6, 2014, SUN notified Defendant Jersey Electric of its defaults and gave it 14 days to remit the amounts owed and 30 days to cure the other defaults. Defendant Jersey Electric failed to do so.

92. As a result of said breaches, Plaintiff has been substantially damaged and continues to be damaged in an amount that will be established at arbitration, but which amount is estimated to be in excess of \$7 million, and includes all unpaid Royalty Fees, Marketing Fund

Contributions, and equipment orders, plus late fees, taxes, interest, and attorneys' fees, as well as lost future profits.

SEVENTH CLAIM FOR RELIEF
(Breach of Guaranty)
(Defendant Brian Geczi)

93. Plaintiff hereby incorporates and realleges paragraphs 1 through 92 of this Complaint.

94. Under the terms of the Guaranty, Defendant Geczi agreed that he would be "personally bound by, and personally liable, for Franchisee's [Jersey Electric, Inc.] breach of any provision in the [Franchise] Agreement, including those relating to monetary obligations and obligations to take or refrain from taking specific actions or engaging in specific activities, such as those contemplated by Sections 6, 7, and 17 of the [Franchise] Agreement."

95. The express terms of the Guaranty further provide that Defendant Geczi consents and agrees that he "shall render any payment or performance required under the [Franchise] Agreement upon demand if Franchisee fails or refuses punctually to do so."

96. Defendant Jersey Electric has breached the Franchise Agreement by, *inter alia*: (i) ceasing to operate their Solar Universe Business (Franchise Agreement, ¶¶ 13.3, 13.4); (ii) failing to pay Royalty Fees, Taxes, Late Fees, Marketing Fund Contributions, equipment order fees, and other items; (iii) failing to provide SUN with a monthly statement of Gross Sales, monthly financial statements and other reports (Franchise Agreement, ¶¶ 12.3, 12.4); (iv) operating a Competitive Business – *i.e.*, Jersey Solar (Franchise Agreement, ¶ 7.3); (v) using SUN's Marks without authorization in connection with their operation of Jersey Solar (Franchise Agreement, ¶ 6.2); and (vi) misappropriating, disclosing or using SUN's Trade Secrets and Confidential Information in connection with their operation of Jersey Solar (Franchise Agreement, ¶¶ 7.1, 9.3).

97. On or about June 6, 2014, SUN notified Defendant Jersey Electric of its defaults and gave it 14 days to remit outstanding amounts owed and 30 days to cure the other defaults. Defendant Jersey Electric failed to do so.

98. Defendant Geczi has breached the Guaranty by failing to render any payments or performance due on Defendant Jersey Electric's behalf.

99. As a result of said breach, Plaintiff has been substantially damaged and continues to be damaged in an amount that will be established at arbitration, but which amount is estimated to be in excess of \$7 million, and includes all unpaid Royalty Fees, Marketing Fund Contributions, and equipment orders, plus late fees, taxes, interest, and attorneys' fees, as well as lost future Royalty Fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SUN respectfully prays for the following relief against Defendants:

1. A preliminary and permanent injunction enjoining Defendants, their officers, agents, and employees, from:

a. Unfairly competing with SUN or SUN's franchisees in any manner, including, but not limited to, operating Defendant Jersey Solar or any other competitive business during the term of the Franchise Agreement; and

b. Engaging in any of the following in the operation of a non-franchised business:

- i. Using any trademark, service mark, logo or trade name that is identical to or confusingly similar to the SUN Marks;
- ii. Otherwise infringing upon the SUN Marks or using any similar designation, alone or in combination with any other components;
- iii. Passing off any of their goods or services as those of SUN's or their authorized franchisees;
- iv. Causing likelihood of confusion or misunderstanding as to the source or sponsorship of Defendants' business, products or services;

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- v. Causing likelihood of confusion or misunderstanding as to Defendants' affiliation, connection or association with SUN and its franchisees;
- vi. Committing unfair trade practices in the conduct of Defendants' businesses;
- vii. Using any of SUN's Trade Secrets and/or Confidential Information, including but not limited to, lists of actual or potential customers or suppliers.

2. That Defendants be required to file with the Court and to serve upon defendants within 10 days after entry of any injunction order, a written report, under oath, setting forth the manner in which Defendants have complied with the injunction order;

3. That, within 10 days after the entry of any injunction order, Defendants be required to deliver to Plaintiff or the Court, all products, signs, devices, literature, coupons, advertising, and any other material bearing the infringing designations, all at Defendants' cost;

4. Attorneys' fees and costs; and

5. Such other relief as the Court deems just and proper.

DATED: August 19, 2014

BARTKO, ZANKEL, BUNZEL & MILLER
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

Margaret G. Foley
Attorneys for Plaintiff
SOLAR UNIVERSE, INC.